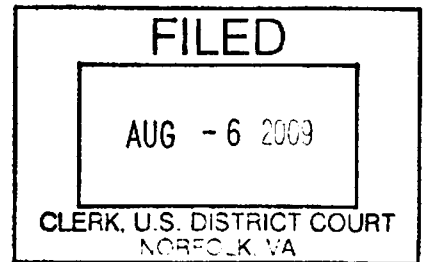


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



FRANK L. HINTON, #26366-083,

Petitioner,

v.

ACTION NO. 2:09cv90

WARDEN, UNITED STATES PENITENTIARY - HAZELTON,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241.

Petitioner, Frank L. Hinton, was convicted in the United States District Court for the Eastern District of Virginia, Norfolk Division. On February 14, 1995, the undersigned sentenced Petitioner to a prison term of 100 months after pleading guilty to one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1).

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72 of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation of the U.S. Magistrate Judge was filed on June 29, 2009, recommending that this matter be transferred to the United States District Court for the Northern District of West Virginia.

This Court cannot exercise personal jurisdiction over Petitioner because he is currently incarcerated at United States Penitentiary - Hazelton, in Bruceton Mills, West Virginia. By copy of the report, Petitioner was advised of his right to file written objections to the findings and recommendations made by the U.S. Magistrate Judge. The Court has received an objection to the U.S. Magistrate Judge's Report and Recommendation by Petitioner. Respondent has not filed an objection, and the time for doing so has now passed.¹

On February 26, 2009, Hinton filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On March 12, 2009, the Court received and filed four motions by Petitioner: two petitions for writ of habeas corpus, one petition for a writ of ad prosequendum, and one motion for a bond hearing. These motions

¹ This case was originally styled as "Frank L. Hinton, #26366-083 v. The United States District Court Norfolk, VA, et al." The U.S. Magistrate Judge, in his Report and Recommendation, ordered the Clerk of Court to substitute the current respondent, Warden, United States Penitentiary - Hazelton, for the original respondents. The Warden of United States Penitentiary - Hazelton was not an original respondent to this action, and has therefore not yet been served in this action. The Warden, however, is the proper respondent, as the proper respondent in a 28 U.S.C. § 2241 case is the warden of the institution that exercises custody over the petitioner at the time the petition is filed. Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004).

To allow Respondent to object to the Report and Recommendation, on July 17, 2009, the Court directed that the Report and Recommendation be mailed to Respondent and to Respondent's presumed counsel, the United States Attorney for the Northern District of West Virginia. The Court has received no response from either Respondent or the United States Attorney.

were filed on Petitioner's trial docket, Criminal Action No. 2:94cr106, and have subsequently been filed in the instant case. As set forth more fully in the U.S. Magistrate Judge's Report and Recommendation, it appears that Petitioner makes two essential arguments in his petitions. First, Petitioner argues that the undersigned misapplied the United States Sentencing Guidelines when he sentenced Petitioner. Generally, such an argument does not support 28 U.S.C. § 2255 relief, but may support such relief given extraordinary circumstances, such as when a sentence exceeds a statutory maximum. United States v. Pregent, 190 F.3d 279, 283-84 (4th Cir. 1999). Petitioner argues that he believed he would receive twenty-four months incarceration by entering a guilty plea, and that the undersigned's sentence of 100 was excessive. Second, Petitioner argues that he has already served the 100 month sentence and that he should therefore be released. Challenges to the execution of a sentence are properly § 2241 petitions. See United States v. Miller, 871 F.2d 488, 490 (4th Cir. 1989).

The Court, having reviewed the record and examined the objection filed by Petitioner to the U.S. Magistrate Judge's report, and having made de novo findings with respect to the portions objected to, hereby adopts the findings and recommendations set forth in the report of the United States Magistrate Judge filed on June 29, 2009, and it is, therefore, ORDERED that this

matter be TRANSFERRED to the United States District Court for the Northern District of West Virginia.

The Clerk shall mail a copy of this Final Order to the petitioner and the respondent.



Raymond A. Jackson
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 6, 2009